

(2) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* On March 5, 1968, a notice of levy for an unpaid income tax assessment due from A in the amount of \$3,000 is served on the X Insurance Company with respect to A's life insurance policy. On March 5, 1968, the cash loan value of the policy is \$1,500. On April 9, 1968, A does not pay a premium due on the policy in the amount of \$200. Under an automatic premium advance provision contained in the policy originally issued in 1960, X advances the premium out of the cash value of the policy. As of June 3, 1968 (the 90th day after service of the notice of levy), pursuant to the provisions of the policy, the amount of accrued charges upon the automatic premium advance in the amount of \$200 for the period April 9, 1968, through June 3, 1968, is \$2. On June 5, 1968, the district director gives written notification to X indicating that A's unpaid tax assessment is \$2,500. Under this section, X is required to pay to the district director, promptly after receipt of the June 5, 1968, notification, the sum of \$1,298 (\$1,500 less \$200 less \$2), which is the amount A could have had advanced to him by X on June 3, 1968.

*Example 2.* Assume the same facts as in example 1 except that on May 10, 1968, A requests and X grants an advance in the amount of \$1,000. X has actual notice of the existence of the lien by reason of the service of the notice of levy on March 5, 1968. This advance is not required to be made automatically under the policy and reduces the amount of the cash value of the policy. For the use of the \$1,000 advance during the period May 10, 1968, through June 3, 1968, X charges A the sum of \$3. Under this section, X is required to pay to the district director, promptly after receipt of the June 5, 1968, notification, the sum of \$1,298. This \$1,298 amount is composed of the \$295 amount (\$1,500 less \$200 less \$2 less \$1,000 less \$3) A could have had advanced to him by X on June 3, 1968, plus the \$1,000 advance plus the charges in the amount of \$3 with respect thereto.

*Example 3.* Assume the same facts as in example 1 except that the insurance contract does not contain an automatic premium advance provision. The contract does provide that, upon default in the payment of premiums, the policy shall automatically be converted to paid-up term insurance with no cash or loan value. A fails to make the premium payment of \$200 due on April 9, 1968. After expiration of a grace period to make the premium payment, the X Insurance Company applies the cash loan value of \$1,500 to effect the conversion. Since the service of the notice of levy constitutes the exercise of A's right to receive the cash loan value and the amount applied to effect the conversion

is not an automatic advance to A to maintain the policy in force, the conversion of the policy is not an event which will release the cash loan value from the effect of the levy. Therefore, X Insurance Company is required to pay to the district director, promptly after receipt of the June 5, 1968 notification, the sum of \$1,500.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of his unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to section 6332(b), see section 6323(b)(9) and the regulations thereunder.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see section 6325(b) and the regulations thereunder.

[T.D. 7180, 37 FR 7317, Apr. 13, 1972, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

### **§ 301.6332-3 The 21-day holding period applicable to property held by banks.**

(a) *In general.* This section provides special rules relating to the surrender, after 21 days, of deposits subject to levy which are held by banks. The provisions of § 301.6332-1 which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy on property held by banks.

(b) *Definition of bank.* For purposes of this section, the term "bank" means—

(1) A bank or trust company or domestic building and loan association

incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions;

(2) Any credit union the member accounts of which are insured in accordance with the provisions of title II of the Federal Credit Union Act, 12 U.S.C. 1781 *et seq.*; and

(3) A corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(c) *21-day holding period*—(1) *In general.* When a levy is made on deposits held by a bank, the bank shall surrender such deposits (not otherwise subject to an attachment or execution under judicial process) only after 21 calendar days after the date the levy is made. The district director may request an extension of the 21-day holding period pursuant to paragraph (d)(2) of this section. During the prescribed holding period, or any extension thereof, the levy shall be released only upon notification to the bank by the district director of a decision by the Internal Revenue Service to release the levy. If the bank does not receive such notification from the district director within the prescribed holding period, or any extension thereof, the bank must surrender the deposits, including any interest thereon as determined in accordance with paragraph (c)(2) of this section (up to the amount of the levy), on the first business day after the holding period, or any extension thereof, expires. See § 301.6331-1(c) to determine when a levy served by mail is made.

(2) *Payment of interest on deposits.* When a bank surrenders levied deposits at the end of the 21-day holding period (or at the end of any longer period that has been requested by the district di-

rector), the bank must include any interest that has accrued on the deposits prior to and during the holding period, and any extension thereof, under the terms of the bank's agreement with its depositor, but the bank must not surrender an amount greater than the amount of the levy. If the deposits are held in a noninterest bearing account at the time the levy is made, the bank need not include any interest on the deposits at the end of the holding period, or any extension thereof, under this paragraph. Interest that accrues on deposits and is surrendered to the district director at the end of the holding period, or any extension thereof, is treated as a payment to the bank's customer.

(3) *Transactions affecting accounts.* A levy on deposits held by a bank applies to those funds on deposit at the time the levy is made, up to the amount of the levy, and is effective as of the time the levy is made. No withdrawals may be made on levied upon deposits during the 21-day holding period, or any extension thereof.

(4) *Waiver of 21-day holding period.* A depositor may waive the 21-day holding period by notifying the bank of the depositor's intention to do so. Where more than one depositor is listed as the owner of a levied account, all depositors listed as owners of the account must agree to a waiver of the 21-day holding period. If the 21-day holding period is waived, the bank must include with the surrendered deposits a notification to the district director of the waiver.

(5) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

*Example 1.* On April 2, 1992, a notice of levy for an unpaid income tax assessment due from A in the amount of \$10,000 is served on X Bank with respect to A's savings account. At the time the notice of levy is served, X Bank holds \$5,000 in A's interest-bearing savings account. On April 24, 1992, (the first business day after the 21-day holding period) X Bank must surrender \$5,000 plus any interest that accrued on the account under the terms of A's contract with X Bank up through April 23, 1992, (the last day of the holding period).

*Example 2.* The facts are the same as in *Example 1* except that on April 3, 1992, A deposits an additional \$5,000 into the account. On April 24, 1992, X Bank must still surrender

only \$5,000 plus the interest which accrued thereon until the end of the holding period, because the notice of levy served on April 2, 1992, attached only to those funds on deposit at the time the notice was served and not to any subsequent deposits.

*Example 3.* The facts are the same as in *Example 1* except that at the time the notice of levy is served on X Bank, A's savings account contains \$50,000. On April 24, 1992, X Bank must surrender \$10,000, which is the amount of the levy. The levy will not apply to any interest that accrues on the deposit during the 21-day holding period, because the entire amount of the levy is satisfied by the deposits existing at the time the levy is served.

*Example 4.* The facts are the same as in *Example 1* except that the amount of the levy is \$5,002. Under the terms of A's contract with the bank, the account will earn more than \$2 of interest during the 21-day holding period. On April 24, 1992, X Bank must surrender \$5,002 to the district director. The remaining interest which accrued during the 21-day holding period is not subject to the levy.

*Example 5.* On September 3, 1992, A opens a \$5,000 six-month certificate of deposit account with X Bank. Under the terms of the account, the depositor must forfeit up to 30 days of interest on the account in the event of early withdrawal. On January 4, 1993, a notice of levy for an unpaid income tax assessment due from A in the amount of \$10,000 is served with respect to A's certificate of deposit account. On January 26, 1993, the bank must surrender \$5,000 plus the interest which accrued on the account through January 25, 1993, minus the penalty of 30 days of interest as provided in the deposit agreement.

*Example 6.* Same facts as in *Example 5* except that the notice of levy is served on X Bank on February 15, 1993. The certificate matures on March 2, 1993. On March 8, X Bank must surrender \$5,000 plus the interest that accrued on the certificate without any reduction for penalties.

(d) *Notification to the district director of errors with respect to levied upon bank accounts—(1) In general.* If a depositor believes that there is an error with respect to the levied upon account which the depositor wishes to have corrected, the depositor shall notify the district director to whom the assessment is charged by telephone to the telephone number listed on the face of the notice of levy in order to enable the district director to conduct an expeditious review of the alleged error. The district director may require any supporting documentation necessary to the review of the alleged error. The notification by telephone provided for in this sec-

tion does not constitute or substitute for the filing by a third party of a written request under § 301.6343-1(b)(2) for the return of property wrongfully levied upon.

(2) *Disputes regarding the merits of the underlying assessment.* This section does not constitute an additional procedure for an appeal regarding the merits of an underlying assessment. However, if in the judgment of the district director a genuine dispute regarding the merits of an underlying assessment appears to exist, the district director may request an extension of the 21-day holding period.

(3) *Notification of errors from sources other than the depositor.* The district director may take action to release the levy on the bank account based on information obtained from a source other than the depositor, including the bank in which the account is maintained.

(e) *Effective date.* These provisions are effective with respect to levies issued on or after January 4, 1993.

[T. D. 8466, 58 FR 18, Jan. 4, 1993]

#### § 301.6333-1 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the internal revenue officer who has made or is about to make the levy, exhibit such books or records to such officer.

#### § 301.6334-1 Property exempt from levy.

(a) *Enumeration.* In addition to exemptions allowed as a matter of Internal Revenue Service policy, there shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of his family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in